

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 29 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

PATRICK L. KAHAWAIOLA'A;
SAMSON L. BROWN; RICHARD L.
KELA; NORMAN K. MACOMBER, SR.;
STEVEN K. ANGAY; HAROLD U. JIM,

Plaintiffs - Appellants,

v.

GEORGE W. BUSH, United States
President in his official capacity; LINDA
LINGLE, Governor, in her official and
individual capacity; STATE OF HAWAII;
DEPARTMENT OF HAWAIIAN HOME
LANDS; MICAH KANE, Director, in his
official and individual capacity, as
Chairman of Hawaiian Homes
Commission; HERRING KALUA, in his
official and individual capacity as
Hawaiian Homes Commissioner; JOHN
HIROTA; MIKE MCELROY; FRANCIS
APOLIANA; JOHN PIPER, in their
official and individual capacities as Staff
for the Department of Home Lands; RAY
SOON; EDWARD ANDRADE, as private
individuals; MALAMA KA AINA HANA
KA AINA, INC.; WILLIAM K. PAKANI,
SR.; KELLI W. IONE; JAMES

No. 04-16790

D.C. No. CV-03-00517-SOM

MEMORANDUM^{*}

^{*} This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

PELEKANE; AGNES BENEDICTO;
CAROL IOANE; FRANCIS K.
LAIMANA, JR.; KEN'S TOWING
SERVICE; KEN ANTONIO, as private
individuals; HAWAII ISLANDS
HUMANE SOCIETY; RONALD
JENKINS; DUANE MENDOZA, as
private individuals; BIG ISLE MOVING
& DRAYING; MARTIN DYER, as a
private individual; JAMES IOPA, SR., as
a private individual,

Defendants - Appellees.

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Argued and Submitted June 16, 2006
Honolulu, Hawaii

Before: B. FLETCHER, PREGERSON, and HALL, Circuit Judges.

Plaintiffs challenge the district court's order granting a motion for judgment on the pleadings and its sua sponte order dismissing the non-moving parties. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Claims against the State of Hawai'i and its agency, the Department of Hawaiian Homelands ("DHHL"), are barred on the basis of sovereign immunity. *See Wilbur v. Locke*, 423 F.3d 1101, 1111 (9th Cir. 2005). As described below, Plaintiffs' claims against Governor Linda Lingle, employees of DHHL and the

Hawaiian Homelands Commission, and former employees of those agencies are barred because Plaintiffs have failed to state a claim against them.

Claim One for breach of Compact fails because Plaintiffs have not shown that they were harmed by the transfer of management over the trust property from the federal government to the state government. Accordingly, Plaintiffs lack standing to challenge the Hawai'i Statehood Admissions Act of March 18, 1959, Pub. L. No. 86-3, § 5(b), 73 Stat. 4 (1959) (codified at 48 U.S.C. § 491), and "Act 207," *codified at* Haw. Rev. Stat., HHCA, Tit. 2, § 202. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Claim Two for conspiracy fails because Plaintiffs have not alleged that DHHL wrongly favored Malama Ka'Aina Hana Ka'Aina (MAHA) over them, nor have they alleged that they were wrongfully evicted from King's Landing. Claim Three fails because DHHL has statutory authority to grant leases, *see* Haw. Rev. Stat., HHCA, Tit. 2, § 207, and therefore necessarily has the lesser authority to grant temporary rights of entry. Claim Four alleges that DHHL has not properly taxed MAHA as required by the Right of Entry. Even assuming that Plaintiffs could claim state taxpayer standing under *Hoohuli v. Ariyoshi*, 741 F.2d 1169, 1180 (9th Cir. 1984), Plaintiffs' claim would fail because MAHA is a non-profit organization that is likely not subject to property taxes, *see Zelman v. Simmons-*

Harris, 536 U.S. 639, 665 (2002), and therefore Plaintiffs have not properly alleged a “‘good-faith pocketbook’ injury,” *see Hoohuli*, 741 F.2d at 1180. Claim Five fails because Plaintiffs have not stated any allegations that would support a claim for breach of fiduciary duty.

Plaintiffs’ conspiracy claim against Ken’s Towing and its employee, the Hawaiian Island Humane Society and its employees, Big Isle Moving & Draying and its employees, and against individual members of MAHA fails for the same reasons as the claims fail against the state officials: Plaintiffs have not alleged any *wrongful* action on the part of these private Defendants.

Accordingly, the district court’s orders dismissing the claims against all defendants is **AFFIRMED**.